

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID NEWTON,	:	
Petitioner,	:	
	:	02 cr 476 (KTD)
-against-	:	
	:	<u>OPINION AND ORDER</u>
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
	:	
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KEVIN THOMAS DUFFY, U.S.D.J.:

By motion dated December 3, 2013, Defendant David Newton, proceeding pro se, moves for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) in light of the amendments to the United States Sentencing Guidelines for offenses involving crack cocaine. These amendments reduced the base offense level for certain crack-cocaine offenses. For the reasons set forth below, Newton's motion is DENIED.

On November 13, 2002, Defendant pleaded guilty to: (i) conspiracy to distribute and possess with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 812, 846, 841(a)(1) and 841(b)(1)(A); and (ii) distributing and possessing with intent to distribute cocaine base, in violation of 21 U.S.C. 812, 841(a)(1) and 841(b)(1)(B). The Probation Department established that Newton's applicable offense level was 34 and

his Criminal History Category was IV. (PSR ¶ 30). As such, Newtown qualified for a sentencing enhancement as a Career Offender. Under § 4B1.1 of the Sentencing Guidelines, "[a] defendant is a career if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance." U.S.S.G. § 4B1.1. Prior to pleading guilty in this case, the defendant had five prior felony convictions for crimes of violence and the instant offense involved a controlled substance. (PSR ¶ 28). As such, Newton easily qualified as a career offender and his sentencing guidelines range was increased accordingly. The applicable range for Newton's offense was 262 to 327 months. On February 18, 2003, this Court sentenced the defendant to 262 months imprisonment. (Sentencing Tr. at 3). Newton now seeks resentencing under the amended Sentencing Guidelines for crack cocaine offenses.

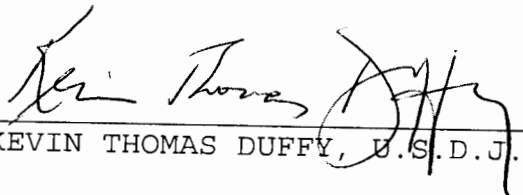
As a general matter, a federal court "'may not modify a term of imprisonment once it has been imposed.'" Dillon v. United States, 560 U.S. 817, 819 (quoting 18 U.S.C. § 3582(c)). However, an exception applies in the case of a defendant "who

has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2). In these cases, a federal court "may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." Id. However, the defendant in this case was sentenced under the Career Offender provision, § 4B1.1, of the Sentencing Guidelines and not the amended crack cocaine offense guidelines found in § 2D1.1. In United States v. Martinez, 572 F.3d 82 (2d Cir. 2009), the Second Circuit unambiguously held that "a defendant convicted of crack cocaine offenses but sentenced as a career offender under U.S.S.G. § 4B1.1 is not eligible to be resentenced under the amendments to the crack cocaine guidelines." Id. at 85. Because Newton was sentenced by this Court as a Career Offender, pursuant to United States Sentencing Guideline § 4B1.1, he is not eligible for a reduction under 18 U.S.C. § 3582(c)(2).

For these reasons, the defendant's motion is DENIED. The Clerk of the Court is directed to terminate Docket Entry 19.

SO ORDERED:

Dated: New York, New York
November 17, 2014


KEVIN THOMAS DUFFY, U.S.D.J.

